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HIGH COURT OF CHHATTISGARH, BILASPUR.

CRIMINAL APPEAL No. 1201/1998

Appellant — Lekhan, s/o Lakhmu Dhurva, Aged about 35 years, r/o village Birungpal, P.S. Frazerpur, Distt. Bastar

Vs.

Respondent — State of Madhya Pradesh (now Chhattisgarh), through the Police Station, Frazerpur, Distt. Bastar

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Appearance:

Shri S.D.Singh with Shri Rahul Jha,, counsel for the appellant.

Shri U.K.S. Chandel, Panel Lawyer, for the state

D.B: Hon'ble Shri L. C. Bhadoo, &
Hon'ble Shri Sunil Kumar Sinha, JJ.

ORAL JUDGMENT
(19.11.2007)

The following judgment was delivered by
L.C.Bhadoo, J,

(1) This appeal was filed by accused Lekhan through Superintendent of Central Jail, Jagdalpur and it has been received on transfer from the High Court of Madhya Pradesh, Jabalpur. The appellant is said to be in detention since 19.9.2003. In M.P. High Court Smt. Durgesh Gupta, Advocate, was appointed as counsel to represent appellant Lekhan in this appeal. Therefore, Shri S.D. Singh, Advocate, has been appointed to appear and argue on behalf of the appellant Lekhan in this appeal and necessary papers of the record have been supplied to him by the Registry. After going through the available material, he has prepared the case and he is ready to argue, therefore, the appeal is heard finally.

(2) The accused appellant has preferred this appeal through the Superintendent, Central Jail, Jagdalpur, whereby he has questioned the legality and correctness of the judgment of conviction and order of sentence dated 19.11.1996 passed by III

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Addl. Sessions Judge, Jagdalpur (Bastar), in Sessions Trial No.362/1993 whereby the learned Addl. Sessions Judge, after holding the accused appellant guilty for commission of the offence punishable u/s 302 I.P.C. sentenced him to undergo imprisonment for life. However, the learned Addl. Sessions Judge acquitted the other two co-accused persons Mehtar and Tibru.

(3) The prosecution case in brief is that on 14.01.1993 when Jaidev (since deceased) was talking to his brother in village Birungpal, the accused appellant Lekhan came with a knife and attacked him with knife on his chest and stomach, as a result of which, Jaidev sustained fatal injuries. He was taken to Maharani Hospital, Jagdalpur. The matter was reported on 15.1.1993 by Dr.M.A.H. Rizvi (P.W.1) under Ex.P.1 in the police station Jagdalpur. The dying declaration of Jaidev was recorded (Ex.P.23) by P.W.10 K.K. Mathew, Executive Magistrate. Dr.Rizvi examined the injuries of the deceased and noticed the following – (i) One stab wound in size of 2" x ¼" just below the right nipple of the chest vertically placed. The edges of the wound were clear cut; and (ii) One stab wound in size of 2" x ¼" on the right side of chest near the rib vertically placed and was bleeding. The intestines were coming out. There was swelling in the area of about 2 ft. He prepared the injury report Ex.P.2. On 15.01.1993, at about 9.30 a.m., Jaidev while undergoing treatment in Maharani Hospital gave *Dehati Nalishi* Ex.P.22 to the Head Constable Ankulchand (P.W.9), on the basis of which First Information Report was recorded and Crime No.12/1993 was registered for commission of the offence u/s 307 I.P.C. The investigating officer recorded the statements of witnesses and the accused was arrested on 16.1.1993. The site plan of the place of occurrence Ex.P.8 was prepared. The blood stained stones and clothes of the accused were seized under Ex.P.7. On 19.1.1993, clothes of the deceased Jaidev were seized. During the treatment deceased Jaidev died on 25.1.1993. The merg intimation No.4/93 was sent to the police station. Head Constable Anukulchand (P.W.9) after giving notice Ex.P-26 to the Panch witnesses prepared the inquest on the body of Jaidev. The post mortem was conducted by Dr.R.S.

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Tandon (P.W.2) on 25.1.1993 who prepared the postmortem Ex.P.4.

(4) After completion of the investigation, the charge sheet was filed against the appellant alongwith two other co-accused persons in the Court of Judicial Magistrate First, Jagdalpur, who in turn committed the case to the court of Sessions Judge, Jagdalpur, from where the learned Addl. Sessions Judge, received the case on transfer for trial.

(5) The prosecution in order to establish the charges against the accused persons examined 10 witnesses. The statement of the accused persons were recorded u/s 313 Cr.P.C. in which they denied the material appearing against them and stated that they are innocent and have been falsely implicated in the crime. They examined two defence witnesses i.e., D.W.1 Cheturam and D.W.2 Sukman.

(6) Learned Addl. Sessions Judge after hearing counsel for the respective parties, convicted the accused Lekhan and sentenced him as aforementioned whereas he acquitted the other two co-accused persons.

(7) We have heard Shri S.D. Singh, learned counsel for the appellant and Shri U.K.S. Chandel, learned Panel Lawyer for the state.

(8) Counsel for the appellant has not disputed the homicidal death of deceased Jaidev. Moreover, P.W.5 Lakshmi Bai, daughter of deceased Jaidev has categorically stated that the accused appellant Lekhan had attacked her father with knife twice, as a result of which, he sustained the injury and he was taken to the hospital. The above ocular evidence of Lakshmi Bai is corroborated by the dying declaration Ex.P.23-A recorded by P.W.10 K.K. Mathew, Executive Magistrate. The above evidence of Lakshmi Bai has also been corroborated by the medical evidence of Dr.S.R. Tandon (P.W.2) who has stated that on 25.1.1993 he was working in Maharani Hospital, Jagdalpur, where he conducted the postmortem on the body of Jaidev, there was a stab wound and the injury was operated upon. According to him, the death was homicidal, as a result of hemorrhage and shock on account of injury sustained by the deceased. In view of the above ocular evidence, dying

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declaration and medical evidence, it is established that death of Jaidev was homicidal.

(9) As far as the complicity of the accused in crime in question is concerned, P.W.5 Lakshmi Bai is none else than the daughter of deceased, who has categorically stated that the accused attacked her father with knife on the chest and stomach and she witnessed the accused attacking the deceased. In the cross examination of this witness, the defence has not been able to elicit any circumstance which may discredit the evidence of this witness. More over the ocular evidence of this witness is corroborated by the dying declaration of the deceased (Ex.P.23A) recorded by the Executive Magistrate K.K. Mathew (P.W.10) who has stated that on the request of police, he went to Maharani hospital, Jagdalpur on 15.1.1993 and he enquired from the Doctor about general condition of Jaidev regarding giving of the statement. He recorded the dying declaration of the deceased in question and answer form and on asking he disclosed that Mehtar & Tibru came about 5.00 p.m. and said that you are practicing witchcraft and accused Lekhan attacked him with Knife on chest and stomach. The above ocular evidence and dying declaration are corroborated by the postmortem report as also the evidence of Dr. S.R.Tandon (P.W.2). Therefore, in view of the above material available on record, we do not find any illegality and infirmity in the findings of the trial Court regarding complicity of the accused Lekhan. There is clear, cogent and legal evidence available on record regarding complicity of the accused Lekhan in attacking the deceased with Knife.

(10) Learned counsel for the accused appellant argued that in this case, there is nothing to show that the accused attacked the deceased with an intention to cause his death. Moreover, the Doctor has not stated that the injury was sufficient in the ordinary course of nature to cause death and the deceased died after 11 days of the injuries sustained by him, therefore, the offence against him does not travel beyond section 304 Part-I IPC.

(11) On the other hand, learned State Counsel supported the judgment of the trial Court.

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(12) A perusal of the evidence shows that P.W.5 Lakshmi Bai has not said anything as to why the accused attacked him. Moreover, P.W.10 K.K.Mathew has stated that the deceased disclosed him that Mehtar & Tibru came and asked him why he is practicing witchcraft; in the meanwhile, Lekhan came with knife and attacked him. There is nothing on record which shows that the accused was having animosity against the deceased and it is an admitted position that deceased Jaidev died after 11 days of the injuries and the doctor has not stated that the injury was sufficient in the ordinary course of nature to cause his death.

(13) In view of the evidence available on record and the nature of injuries sustained by the deceased Jaidev and the manner in which the accused attacked him with knife, we are of the considered opinion that the offence against the accused appellant does not travel beyond section 304 Part-I I.P.C. It appears from the dying declaration that the accused was suspecting that the deceased was practicing witchcraft and he attacked him, therefore, the offence does not travel beyond section 304 Part I of I.P.C. We are fortified in our view by the judgment of the Apex Court in the matter of ***State of Rajasthan –vs- Satyanarayana, Cr.L.J. 1998 2911 (S.C.)***.

(14) In the result, the appeal partly succeeds. The conviction and sentence imposed upon accused appellant u/s 302 I.P.C. are set aside. Instead thereof, he is convicted u/s 304 Part-I I.P.C. It is stated that the accused is in jail since 1993 thereby he has already undergone imprisonment of more than 14 years. Therefore, he is sentenced to undergo the period of sentence already undergone by him and he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

/Rao/